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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8089 of 1997

with

CIVIL APPLICATION No 10766 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No.

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?  
No.

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VADASAMA SEVA SAHAKARI MANDLI LIMITED

Versus

DIRECTOR AGRI. MARKETING AND RURAL FINANCE

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Appearance:

1. Special Civil Application No. 8089 of 1997

MR SK JHAVERI for Petitioner

SERVED BY DS for Respondent No. 1

MR KS JHAVERI for Respondent No. 4

2. Civil Application No 10766 of 1997

MR BS PATEL for Petitioner

MR KS JHAVERI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision:11-12/11/97

ORAL JUDGEMENT (11.11.1997)

The petitioners are the Co.Operative Societies registered under the Gujarat Co.Operative Societies Act 1961(hereinafter referred to as the said Act). According to them they are registered under the said Act as Agriculture Credit Co.Op.Societies and therefore, in view of the provisions of Rule 7 of the Gujarat Agricultural Produce Markets Rules 1965, (hereinafter referred to as the said Rules), their name must be included in the voters list for the purpose of election of the members of the managing committee of the Agriculture Produce Market Committee for Mehsana district. It is their claim that in the preliminary list of voters published under the provisions of section 8(1) , their names were not included. They have filed objections before the concerned authorities to include their names in the list of voters. It is their contention that once they are registered as the Agriculture Credit Co.operative Societies, it is not open for the authority under the Gujarat Agricultural Produce Market Act. 1963 (hereinafter referred to as the Market Act) to inquire into whether they are actually dispensing the credit to the agriculturists or not and the respondent no.3 has gone into that question illegally and improperly and has refused to include their names in the list of voters. Therefore, they have come before this court to get a direction to the respondent no.3 to include their names in the list of voters. It is also their contention that the circulars issued by the State Government on 25.9.97 and 10.10.97 for the purpose of preparing the list of voters were also illegal and invalid and therefore, they should also be struck down.

2. The respondent no.3 has filed affidavit in reply.

On behalf of respondent no.3 it is contended that if the provisions of Rule 7 of the said Rules are considered, then it would be clear that the action taken by the respondent no.3 could not be said to be illegal and improper. It is further contended on behalf of the respondent no.3 that present petition involves disputed question of facts viz. as to whether actually the petitioners are dispensing agriculture Credit or not. It is further contended that the petitioners have already filed their objections for including their names in the list of voters and those objections are yet to be decided and the final list is to be published on 12.11.1997. Therefore, in the circumstances, present petition is premature and therefore, the same deserves to be rejected. It is further contended that the petitioners have got alternative remedy of preferring an election petition as per the provisions of Rule 28. Therefore, on that ground also present petition need not be entertained.

3. Mr. S.K.Zaveri learned Sr. Counsel for the petitioners urged before me that if the provisions of section 7(1) of the Markets Act are considered in the background of the provisions of section 12 of the Gujarat Co-operative Societies Act, then it would be quite clear that the officer preparing the list of voters has to include the names of the members of the managing committee of a co-operative society which has got registration as Agriculture Credit Co-operative Society in view of the bye laws of the said society and he cannot go into the question as to whether said society is actually functioning and advancing loans to its members or not. In order to deal with the said submission of him, it is necessary to consider the provisions of Rule 7 of the said Rules which is running as under:

"7.Preparation of list of voters for general election :(1) Whenever a general election to market committee is to be held-.

(i) every Co-operative society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each members.

(ii) the market committee shall communicate the full names of the traders holding general

licenses in the market area together with the place of or residence of each such trader; and

(iii) every Co-operative Marketing Society shall communicate the full names of the members of its managing committee together with the place of residence of each such member.

to the authorised officer before such date as the Director may by order fix in that behalf;

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election.

(2) The authorised officer shall within seven days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by rule 5 on the basis of the information received under sub-rule (1) and, if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial number of each voter. "

(emphasis supplied)

It must be remembered that the Market Act and Gujarat Co-operative Societies Act are two separate and independent Acts and the Gujarat Co-operative Societies Act 1961 legislations framed are framed under the said Act in view of the provisions of the said independent Act. It is very pertinent to note that there is no section/provisions in the Market Act saying that the provisions of the said Act would be applicable wherever there is no specific provision to that effect in this Act -Market Act. It must also be remembered that the Markets Act is a special enactment created for the benefit and upliftment of the agriculturists. The cultivators, tillers and agriculturists suffer from many handicaps in getting the good price for the agricultural produce and in order to remove said handicaps and to see that the agriculturists, tillers and farmers should get good price for their agricultural produce, this enactment viz. the Markets Act has been enacted. Therefore, bearing this aspect in mind the above quoted Rule 7 has to be considered and interpreted. The words " dispensing agricultural credit in the market area" are used in this Rule 7(1) as and by way of adjective to a Co-operative Society. Said adjective indicates in clear and

unambiguous terms the intention of the Legislature that every Co-operative Society which is actually dispensing agricultural credit in the market area shall have their right of their managing committee members in the list of voters.

4. Section 12 of the said Act empowers the Registrar under the said Act to classify the societies under various heads and it further says that said classification made by him would be final. That would be clear from the following provisions of section 12 of the said Act:

"12. Classification of societies. The Registrar may classify all societies in such manner, and into such classes, as he thinks fit; and the classification of a society under any head of classification by the Registrar shall be final."

But the above provisions of section 12 are the provisions under the said Act and it could not be said that said provisions are binding and applicable in consideration of a claim under any other independent Act. Under the said provision of section 12, no doubt, it is open for the Registrar of Co-operative Societies to have classification of the societies in various classes. It is also not in dispute that by using said powers, the Registrar has classified the societies in the classifications as (1) Agricultural Credit Co-operative Societies, (2) Agricultural Non-Credit Co.Op.Societies, (3) Non-Agricultural Non-Credit Co.Op.Societies and (4) other types of Co-operative Societies and this classification made by the Registrar is implemented in view of the provisions of the said section 12 and necessary entries are made in the registers of Societies maintained under sections 9 and 10 of the said Act. But that classification or registration is made for the consideration and the application of the provisions of the said Act. That classification made under the said Act could not be taken to be final and binding while considering the claim of a co-operative society under any other provisions of any other law. What is meant by section 12 is to give finality to the classification made by the Registrar for the purpose of the provisions of the said Act. Therefore, merely because a co-operative society has got its registration as agricultural credit co-operative society, it cannot claim to have registration of the names of the members of the managing committee of that society in the list of voters to be prepared under Rule 7 of the said Rules. In order to get registration as a voter in the list of voters all the

names of the members of the managing committee of the society, the Co-operative society must be dispensing agricultural credit in the market area when there is a consideration of including the names in the list of voters. This provision seems to have been made to see that those persons who are actually and factually working for the welfare of the agriculturist must alone be voters for election of a Market Committee .If at all the Legislature intended that names of the managing committee of all the co-operative societies which have got registration as agricultural credit society, then Rule 7(1) would have mentioned accordingly. The emphasis given under the provisions to sub-rule 1 of Rule 7 is on dispensing of agricultural credit in the market area by a Co-operative Society. Therefore, it is open to the authorised officer to inquire into as to whether the co-operative society is actually dispensing agricultural credit in the market area or not. Therefore, it could not be said that the authorised officer had no jurisdiction to inquire into the the question as to whether a co-operative society is actually dispensing agricultural credit or not when it has got its registration as agricultural credit society as per its bye laws.

{Continued on 12.11.1997}

5. No doubt the State Government has issued two circulars on 25.5.97 and 10.10.97 giving certain directions as to how to ascertain whether a co-operative society is dispensing agricultural credit or not and as per the said circulars a co-operative society which wants registration of the names of the members of the managing committee in the list of voters has to give certain details regarding dispensing of the agricultural credit. If these circulars are considered along with the provisions of Rule 7(i)(i) it could not be said that said circulars are illegal or improper. After all the circulars are the administrative guidelines and they have no force of law. No doubt in SCA No. 7616 of 1997 filed by Defia Seva Sahakari Mandli Ltd. and ors. vs. Director Agricultural Marketing & Rural Finance, the learned Additional Government Pleader had made a statement that the authorised officer will prepare the list of voters without being influenced by the circular dated 25.9.1997 and the subsequent notification dated 10.10.1997 and by ignoring them. At the cost of repetition it must be stated that these two circulars are only giving guidelines for the purpose of ascertaining whether a co-operative society is dispensing agricultural credit in the market area or not. In the view taken by

me in view of Rule 7(1)(1) of the said Rules, a co-operative society which is actually dispensing agricultural credit in the market area is entitled to have the names of the members of the managing committee of that society in the list of voters. Therefore, for finding out that fact, the authorised officer has to go into the question as to whether the co-operative society is actually dispensing agricultural credit in the market area or not and for that purpose he has to make reference to certain facts. But merely because he has done so it could not be said that he has acted contrary to the statements made on his behalf before this court in SCA 7616/87. In the order passed by the authorised officer he has nowhere stated that he has taken into consideration the guidelines given in these circulars and from his order it is also not possible to hold that as a matter of fact he was influenced by those circulars. Therefore, in the circumstances, non inclusion of the names of the members of the managing committee of the petitioners-societies could not be said to be contrary to the statement made before this court in SCA No. 7616/97.

6. At the cost of repetition it must be stated that in view of the provisions of Rule 7(1) the authorised officer has to go into the question as to whether the co-operative society is dispensing agriculture credit in the market area or not and he is not bound by the fact that bye laws of the said co-operative society and the registration of the said society shows that it is an agricultural credit co-operative society and the classification made by the Registrar under the said Act, is not binding on the said authorised officer. This view of mine is supported by the earlier decision of this court in the case of Gunvantraai Manibhai Desai vs. B. Narasimhan & ors. 1984(1) GLR 603. In this case it has been observed as under:

" The Registrar of Co-operative Societies, who is created as an authority under the Act and for the purposes of the Act, cannot have any powers to decide anything regarding another Act, and presumptively for the purposes of the Agricultural Produce Markets Act where the hierarchy of Officers is totally distinct. It is to be noted that when the Agricultural Produce Markets Act gives the clear definition of what an agriculture is and, therefore, what an agricultural co-operative society is and also gives what a co-operative marketing society is for the purpose of this Act, the definition given in the Act alone is to be looked to and any

arbitrary classification made by the Registrar of Co-operative Societies, may be under the misconceived resolutions of the Government, cannot have any effect whatsoever. Simply because in the Agricultural Produce Markets Act , societies are referred to as societies registered under the Co-operative Societies Act, the provisions of the Gujarat Co-operative Societies Act are not enbloc attracted, nor can those provisions be read as a part and parcel of and supplementary to the provisions of the Agricultural Produce markets Act."

7. There is no dispute of the fact that as per the provisions of Rule 7 and 8(1) a provisional list of voters is prepared on 7.11.97 and in the said list the names of the members of the managing committee of the present petitioners are not included. It is also an admitted fact that present petitioners have made representations before the authorised officer for including the names of the members of the managing committee in the voters list and those objections raised by the present petitioners are not yet decided and no final list of voters is prepared till today. The final list is to be prepared after deciding the objections raised by the present petitioners and to be published on 12.11.97. Therefore, the claim made by the petitioners in this petition which is filed on 3.11.97 is a premature petition.

8. Mr. S.K.Zaveri submitted before me that none of the members of the managing committee of the petitioners society is desirous of contesting the election and therefore, if the provisions of Rule 28 are taken into consideration then it would be quite clear that the petitioners will have no alternative remedy of filing an election petition to set aside the election is available. It is further submitted by him that if the provisions of Rule 28 are considered then only those persons who are classified either to be elected or to be voted can file an election petition. Therefore, as the names of the members of the managing committee of the present petitioners are not included in the list of voters, they cannot be governed by the provisions of Rule 28 of the said Rules. It must be remembered that right to vote is not a fundamental right but it is a statutory right. If there is illegal deprivation of the said statutory right, then that person authority can come before the election Tribunal to challenge the said election. The denial of right to vote or denial to contest an election could be a cause of action for filing an election petition. The



question as to whether a person has got a right to vote or to contest the election is to be considered by the election Tribunal. Therefore, I am unable to accept the contention of Mr. Zaveri that the petitioner has no alternative remedy under Rule 28.

9. The Division bench of this court in the case of Mehsana District Cooperative Sales & Purchase Union Ltd. & anor. vs. State of Gujarat & ors. 1988(2) GLH 149 has taken the view that the dispute regarding preparation and publication of list of voters in the election to the market Committee could be by way of challenging the validity of the election and writ petition under article 226 is not tenable by observing as under:

"The question in these two petitions is, whether the High Court in exercise of jurisdiction under Art.226 of the Constitution would be justified in arresting the election programme which has been set in motion by the issuance of an order under Rr.4 and 10 of the Rules on the plea of omission of certain names from the list of voters finalised by the Authorised Officer in view of the special forum and remedy provided by R. 28 of the Rules ? On a combined reading of Rr. 5,7 and 8 with S.11 of the Act it becomes clear that the list of voters has to be prepared for the constitution of a market committee under S. 11 of the Act. It is therefore, manifest that the list of voters has to be prepared as a first step in the direction of holding election for the constitution of a market committee under S.11 of the Act. Prima facie, therefore, the preparation of list of voters is a step in the direction of holding of elections so far as the scheme of the Rules is concerned. R. 28 provides for the machinery for determination of an election dispute which touches the validity of the election. According to the said Rule, if the validity is questioned after the declaration of the result, it has to be decided by the special forum created by the said Rule. That forum has the power to confirm or amend the declared result or set aside the election. It must be remembered that the right to be included in the voters' list is conferred by statute and not de hors the said statute since the petitioners have no right in equity or at common law. The right being a statutory right must be exercised within the framework of the statute and if the statute provides for an efficacious remedy for the

enforcement of the right, the High Court would be justified in refusing to exercise jurisdiction under Art.226 of the Constitution."

10. Thus Mr. Zaveri for the petitioners has urged before me to grant interim relief by issuing direction to the respondent no.3 to include the names of the members of the managing committee of the petitioners in the list of voters subject to the final decision of this petition and the question raised by the petitioners should be decided finally subsequently by issuing Rule. But in view of the discussion and the reasons given above, I am of the view that present petition is not tenable and the same need not be admitted. In my opinion, no such interim relief could be granted in view of the fact that present petition does not lie under article 226 of the Constitution in view of the provisions of Rule 28 of the said Rules and in view of the decision taken by the Division bench of this court. I therefore, do not accept said submission made by him. Thus I hold that present petition deserves to be rejected. I therefore, reject the same with no order as to costs. Notice discharged.

(S.D.Pandit.J)